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JUN 20 2008

OFFICE OF PETITIONS

In re Application of :
Hiroteru Tsuchiya :
Application No. 10/077,891 : **DECISION ON PETITION**
Filed: February 20, 2002 :
Attorney Docket No. 016907-1374 :

This is a decision on the renewed petition, filed April 18, 2008, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application or in the alternative a request to revive application under unintentional abandonment.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(a) is **GRANTED**.

This application was held abandoned for failure to timely reply to the Notice of Allowability mailed November 17, 2006, which set a three (3) month statutory period for reply. A Notice of Abandonment was mailed on March 19, 2007 noting applicant's failure to file corrected drawings in response to the Notice of Allowability. The issue fee had been timely filed.

The petition under 37 CFR 1.181:

Petitioner asserts that no corrected drawings were required and that the Notice of Allowability was in error. Whether or not the Notice of Allowability contained an error petitioner is required to reply to the Office action as the condition of the application may require. See 35 U.S.C. 133 and 37 CFR 1.135. Additionally, such responses must be in writing. See 37 CFR 1.2. That petitioner had a telephone conversation with the examiner confirming that corrected drawings were not required is immaterial to the abandonment of this application.

Petitioner further asserts that the examiner transmitted by facsimile a copy of an unsigned replacement PTOL-37 and argues that there was no reason to expect that such a paper would be signed as the PTOL-37 mailed November 17, 2006 was not signed. Despite petitioner's assertions to the contrary the Office action mailed November 17, 2006 was signed by Primary

Examiner Tommy D. Lee. MPEP 707.09 states that all Office actions and other correspondence should be signed by a Primary Examiner or Other Authorized Examiner. Additionally, MPEP 1005 states that allowance requires the signature of a Primary Examiner. Moreover, MPEP 707.12 states that copies of an examiner's action are mailed by the Technology Center after the original, initialed by the assistant examiner and signed by the authorized signatory examiner, has been placed in the file. Mailing and transmission by facsimile are not the same. As the Office action mailed November 17, 2007 followed all of the policies set forth in the MPEP, petitioner should have recognized that the PTOL-37 sent by facsimile was informal.

Petitioner was officially informed, correctly or incorrectly, that corrected drawings were required as set forth in the November 17, 2006 Notice of Allowability. Absent an official supplemental Notice of Allowability, it was applicant's responsibility to respond, in writing, to the drawing requirement and indicate it appeared to be an erroneous indication and request a supplemental Notice of Allowability. Applicant did not do so and the application is properly abandoned.

The petition under 37 CFR 1.181 is dismissed.

The petition under 37 CFR 1.137(a):


The renewed petition requested that in the alternative the petition be considered as a request to revive the application under unintentional abandonment. This request is treated as a request to revive an abandoned application under unavoidable abandonment (37 CFR 1.137(a)).

The petition under 37 CFR 1.137(a) is granted.

The petition fee for a petition filed under 37 CFR 1.137(a) has been charged to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Carl Friedman at (571) 272-6842.

The application is being forwarded to the Office of Data Management for further processing of the application.



David Bueci
Petitions Examiner
Office of Petitions